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Commercial Law

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COMMERCIAL LAW

BUCKHANNON SALES CO. v. APPALANTIC CORP., 338 S.E.2d 222 (W. Va. 1985).

Civil Procedure—Commercial Law—Contracts—Evidence

The Circuit Court of Lewis County had sustained appellee's motion in limine to prevent the introduction of parol testimony to clarify the 1979 contract between Buckhannon and Appalantic for the purchase of coal. Buckhannon's suit under the Uniform Declaratory Judgment Act of West Virginia sought clarification of whether trucking and washing costs of coal sold under the contract must be deducted before taking its commission on all sales, or only for coal taken from certain specified mines, as Buckhannon maintained. Appalantic's motion was sustained, to exclude parol evidence, and summary judgment was issued for appellee.

The court addressed the following issues: (1) Whether the 1979 contract between the parties was uncertain and ambiguous, so as to make parol evidence admissible; and (2) whether the circuit court erred in granting a summary judgment to appellee where issues of fact under the contract remained in dispute.

In reversing and remanding, the court held that the parol evidence rule does not bar the introduction of testimony when writings are ambiguous. The court could not find as a matter of law that the agreements between the parties clearly indicated whether the washing and trucking charges should be deducted from all coal supplied under the agreement or only a portion of it. When viewed without reference to extrinsic evidence, the contract was susceptible to different interpretations. It was possible that Buckhannon's testimony would not have varied or contradicted the writings, but provided completeness. Therefore, sustaining the motion in limine was improper. Also, because issues of fact were raised, the trial court's judgment on the pleadings was improper.

CHARLESTON URBAN RENEWAL AUTH. v. STANLEY, 346 S.E.2d 740 (W. Va. 1985).

Accord and Satisfaction—Commercial Law—Landlord-Tenant—Property The Circuit Court of Kanawha County had upheld CURA's eviction of appellee Stanley from Charleston premises which he rented on a month-to-month lease for use as a parking lot at $600 per month. Upon termination of the tenancy in November, 1982, Stanley held over, tendering $600 in one form or another for each month held over. His January payment was in four installments of $150 each. CURA's action for damages was dismissed by the circuit court on the grounds of accord and satisfaction.

The court addressed two issues in this case: (1) Whether, where a tenant tenders a check to his landlord bearing a notation that it is offered in full settlement,

the retention and use of the check by the landlord constitute an accord and satisfaction; (2) whether an appellant's position that Stanley's continuing occupation of the premises would be construed as a tenancy from day-to-day, at $150 per day, is tenable, in light of CURA's acceptance and retention of checks for seven months after termination of the lease.

The court, reversing and remanding, found that not only did Stanley's final check for January, 1983, bear the notation "January rent in full," it was clear that the check was offered only on condition that it be taken as full payment, or not at all. These elements, combined with $600 total consideration, satisfied all the requirements for an accord and satisfaction for appellee's January, 1983 rent. The rent for the period February through July, 1983, was duly paid in installments of $600 each, but it was unclear if these were also tendered in full payment, which the circuit court must now decide.

Judge Brotherton, dissenting, stated that there is no magic in the words "in full." When a check bears *some notation* that it is offered in full payment of a claim, the retention and use of it by the creditor constitutes an accord and satisfaction. CURA's acceptance and use of the February through July checks should be an accord and satisfaction as a matter of law for those months. The January check placed CURA on notice of Stanley's intent, as did words such as "February rent," etc.

FIRST NAT'L BANK IN MARLINTON v. BLACKHURST, 345 S.E.2d 567 (W. Va. 1986).

Civil Procedure—Commercial Law—Discovery Requests—Evidence—Personal Liability on Commercial Notes

The Circuit Court of Pocahontas County denied defendants' motion for a directed verdict in a suit brought by Marlinton Bank claiming defendants were personally liable for some $94,000 worth of notes signed by them in order to finance the operation of Josh, Inc., which had since filed for bankruptcy. After the jury found defendants jointly and severally liable for the indebtedness, defendants moved for a j.n.o.v., and a new trial, both denied.

The West Virginia Supreme Court of Appeals addressed five issues in the case: (1) Whether, where the defendants' signatures upon a note do not show their representative capacity, and the plaintiff was an immediate party to the instrument, parol evidence may be introduced to clarify personal liability; (2) whether sufficient evidence was introduced to rebut a presumption of a signature's genuineness, thus making the trial court's refusal of a new trial or j.n.o.v. error; (3) whether an exchange of notes for new notes which, unknown to the holder, contain forged signatures, operates as a discharge; (4) whether the court's failure to supplement discovery requests was prejudicial to the defendants; (5) whether a new trial should be granted by reason of defense counsel's possible violation of the West Virginia Code of Professional Responsibility.

The court held that although defendants signed under the legend "Josh, Inc.," the legend alone was not enough to free defendants of personal liability. This fact, however, combined with the bank being an immediate party to the instrument, meant the admission of parol evidence on the issue of personal liability was proper. While the presumption of the signature of A. A. Blackhurst being a genuine one was removed in favor of the bank by the defendant's denial and production of a sample signature, the jury chose to believe the bank's other witnesses, and its verdict will not be second guessed. Even if Blackhurst's signature on subsequent notes was forged, it was still possible to find him liable on three earlier notes. For this reason also, the failure to supplement discovery of the new notes was not grounds for a new trial. Attorney Kupec's violation of a disciplinary rule in his joint representation of defendants was only problematic. Moreover, the question of a new trial based on strategy of counsel is one of discretion for the trial court, and in the absence of a clear abuse of such discretion will not be reversed.

GREGOIRE v. LOWNDES BANK, 342 S.E.2d 264 (W. Va. 1986).

Commercial Law—Guaranty Agreements—Negotiable Instruments

The Circuit Court of Randolph County permanently enjoined appellant Bank from foreclosing upon real estate owned by appellees as guarantors of two promissory notes executed by separate guaranty agreements in 1976 and 1979 for the purpose of coal leasing and mining.

The issues were: (1) Whether the trial court erred in deeming the guaranty agreements negotiable instruments under section 46-3-102(1)(e) of the West Virginia Code and the Uniform Commercial Code; (2) whether there was a breach of the contract of guaranty by appellant bank which increased the guarantors' risk or otherwise injured their rights, so as to discharge appellees' obligations.

The court, reversing and remanding, found that the trial court erred in ruling the guaranty agreements to be negotiable instruments, and misapplied sections 46-3-415, -416, and -606(1) of the West Virginia Code to the transactions in question. The court held that a negotiable instrument must contain an unconstitutional promise or order to pay, must be for "a sum certain," and be payable on demand or at a definite time. The agreements here fulfilled none of these conditions, being continuing guarantees. Appellant's failure to provide any specific extension of time for payment and its activities with respect to collateral may have been bad business advice, but does not alone justify discharge of a guarantor. Thus the judgment of the circuit court must be reversed and remanded for dissolution of the permanent injunction.

TROY MINING CORP. v. ITMANN COAL CO., 346 S.E.2d 749 (W. Va. 1986).

Commercial Law—Contracts—Oral Modification—Unconscionability

The Circuit Court of Wyoming County directed a verdict for the defendant, Itmann Coal Company, in a suit brought by Troy Mining's predecessor, V & R Coal Company, on a mining contract which the plaintiff alleged was unconscionable due to a seven-day termination clause invoked by Itmann nine months into a five year contract agreement. V & R also, on the strength of an alleged oral modification of the agreement, borrowed $250,000 for the purchase of new equipment and produced at an elevated level for four months, but upon termination, Itmann refused to purchase the on-site equipment and did not provide V & R with another site to mine, so that V & R discontinued operations.

The issues addressed by the court were: (1) Whether the termination clause in this contract was so one-sided as to lead to absurd results, and therefore unconscionable; and (2) whether the evidence was sufficient on the part of the party seeking to establish an oral modification so as to demonstrate clearly and convincingly that the minds of the parties definitely met on the alteration.

In affirming the circuit court's ruling, the court found that all the testimony indicated that mutual termination on short notice is a common, or even standard, provision in a contract mining agreement, and such clauses were included in all Itmann's contracts with its contract miners, being of potential benefit to both sides. Such common business usage, benefit to parties similarly situated, and potential benefit meant the provision was not unconscionable As to V & R's claim of "procedural unconscionability" or overall unconscionability, two of V & R's officials read the contract prior to execution and there was no compelling evidence that any unfair provision was forced upon them. Further, a determination as to unconscionability must be made as of the date of execution, not after termination. All of appellant's evidence of conversations relative to oral modifications, guaranteed purchases of increased production, etc. showed no reference that the written contract was even mentioned. The single piece of documentation offered made it clear that Itmann's ability to purchase increased tonnage was contingent on the continuation of good market conditions. Any reliance on statements guaranteeing a perpetual market was simply unreasonable on V & R's part. Even were such oral modifications proven, they would not affect the termination clause.

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See also,

CIVIL PROCEDURE:

Danco, Inc. v. Donahue, 341 S.E.2d 676 (W. Va. 1985).

INSURANCE:

Warden v. Bank of Mingo, 341 S.E.2d 679 (W. Va. 1985).